

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Midland Funding LLC,)	CASE NO.: 3:08-cv-01434
)	
Plaintiff/Counter-Defendant,)	HON. DAVID A. KATZ
)	
vs.)	
)	
Andrea Brent,)	
)	
Defendant/Counterclaimant,)	
)	
vs.)	
)	
Midland Credit Management, Inc.)	
)	
Counterclaim Defendant.)	
)	

**MIDLAND FUNDING, LLC AND MIDLAND CREDIT MANAGEMENT, INC.’S JOINT
RESPONSE TO NOTICE OF MEDIATION STATUS FILED BY
DEFENDANT/COUNTER-CLAIMANT**

On October 30, 2009, Defendant/Counterclaimant, Andrea Brent (“Brent”) filed a “Notice of Mediation Status” with this Court (“Notice”). (ECF Dkt. # 57). In the Notice, Brent claims as follows:

Midland has agreed to this notice of the Court that all parties intend to proceed on two fronts; (1) Plaintiffs [sic] will, forthwith, prepare and file with the court a supplemental memorandum in support of class certification based upon the second amended [counterclaim] complaint, (2) at the same time the parties will continue to attempt to resolve through mediation with Judge McQuade.

(ECF Docket # 57 at 1) (emphasis in original).

While Brent’s counsel did make clear at the mediation that they wanted to begin to move the case forward, while also continuing to seek a settlement through mediation, the Notice was filed without the other parties being informed of its form or content.

As this Court is aware, on August 11, 2009, this Court issued a Memorandum Opinion and Judgment, which granted, in part, Brent's Motion for Summary Judgment on the allegations in her First Amended Counterclaim. (ECF Dkt. #'s 50 and 51).

On August 31, 2009, the Court held a status conference, during which the parties agreed to send the case to mediation with the Honorable Richard McQuade. In addition, Brent's counsel stated that they would like to seek leave to amend her First Amended Counterclaim, but did not state what type of amendments that they were seeking. Later that same day, the Court issued an Order, which gave Brent 10 days to file her amended pleading and then stayed the case pending mediation. (ECF Dkt. # 53).

On September 10, 2009, Brent filed her Second Amended Counterclaim (ECF Dkt. # 54) which seeks to dramatically enlarge the scope of this case well beyond the allegations in the First Amended Counterclaim (ECF Dkt. # 22). For example, Brent's proposed Second Amended Counterclaim seeks to add several new classes and to enlarge the case from a putative Ohio to national class action.

As an initial matter, Midland and MCM would prefer that the Court's stay on proceedings remain in place until after the next mediation session, which is scheduled to take place on December 8, 2009. In the alternative, if Brent remains insistent on also immediately moving the case forward in this Court, then Brent's suggestion to file a motion for class certification based upon the Second Amended Counterclaim is premature. Indeed, Midland, MCM, and this Court must first address if Brent's Second Amended Counterclaim meets the requirements of Fed. R. Civ. P. 15.

In this regard, Midland and MCM have multiple objections to Brent's Second Amended Counterclaim, which Midland and MCM have been unable to raise due to the fact that the case

has been stayed pending the completion of mediation. Likewise, these objections could not be raised at the August 31, 2009 status conference, because Midland and MCM did not have any notice of what Brent's Second Amended Counterclaim may contain. At the very least, Midland and MCM must be given the opportunity to file a motion to strike and/or motion to dismiss Brent's Second Amended Counterclaim, prior to the case moving forward on class certification.

Respectfully Submitted:

Dated: November 4, 2009

/s/ Theodore W. Seitz
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PROOF OF SERVICE

I hereby certify that on November 4, 2009 copy of the foregoing was filed electronically in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to parties by operation of the court's electronic filing system

/s/ Theodore W. Seitz
Theodore W. Seitz

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